PTO/SB/21 (08-03).

November 7, 2003

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Date

Approved for use through 08/30/2003. OMB 0651-0031 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. 10/619.380 Application Number RRANSMITTAL July 14, 2003 Filing Date ୍ମ FORM First Named Inventor Ty Whitaker (to be used for all correspondence after initial filing) **Group Art Unit** Not Assigned **Examiner Name** Not Assigned ota 10 FMb of Pages in This Submission Attorney Docket Number 281-398.01 ENCLOSURES (check all that apply) ☐ After Allowance Communication to Fee Transmittal Form ■ Drawing(s) Technology Center (TC) Appeal Communication to Board of Fee Attached ☐ Licensing-related Papers Appeals and Interferences Appeal Communication to TC (Appeal Amendment / Reply Petition Notice, Brief, Reply Brief) Petition to Convert to a After Final Proprietary Information Provisional Application Power of Attorney, Revocation Affidavits/declaration(s) Status Letter Change of Correspondence Address Terminal Disclaimer Other Enclosure(s) Extension of Time Request (please identify below): Request for Refund One check in the amount of \$1638 for filing fee Express Abandonment Request (\$770), claims (\$608), surcharge (\$130), and CD, Number of CD(s) petition fees (\$130), Petition and fee under 37 CFR §§ 1.53(e) and 1.17(h) with request for Information Disclosure Statement refund (3 pgs.), Executed Declaration and Power of Attorney for Patent Application (4 pgs.), Copy of Notice of Incomplete Nonprovisional Application (2 pgs.), Copy of application postcard receipt (Date Stamped), Copy of express mail receipt (mail label EV 303718774US), Copy of Utility Patent Application Transmittal; Drawings marked (COPY) (3 sheets), Certificate of First Class Mailing, and Return mailroom postcard. The Commissioner is authorized to charge any additional fees Certified Copy of Priority Remarks to Deposit Account No. 50-0289. Document(s) Response to Missing Parts/ Incomplete Application Response to Missing Parts under 37 CFR 1.52 or 1.53 SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT Firm Wall Marjama & Bilinski LLP dseph B. Milsteir Reg. No. 42,897 Individual name Signature November 7, 2003 Date **CERTIFICATE OF MAILING** I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This oblection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Kathleen A. Mulligan-Piraino

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Cathleen A. Mulligan-Piraing

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Ty Whitaker, et. al.

Application No.: 10/619,380

Filed: July 14, 2003

For: Motion Management in a Fast Blood

Pressure Measurement Device

Mail Stop Petitions Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 Confirmation No. 5428

PETITION AND FEE

UNDER 37 CFR §§ 1.53(e) 2 & 1.17(h)

Sir:

Responsive to a Notice of Incomplete Nonprovisional Application mailed from the U.S. Patent and Trademark Office on October 16, 2003, Applicants respectfully submit herewith the following:

a copy of the Notice of Incomplete Nonprovisional Application, which indicates that:

- 1. a filing date was not accorded the application because it is purported that the application was deposited without Drawings;
- 2. the filing fee is missing;
- 3. the oath or declaration is missing;

an original copy of the Declaration and Power of Attorney executed by the various inventors during the period of September 4, 2003 through September 11, 2003;

- a check in the amount of \$1638, including \$770 basic filing fee, \$608 excess claims fee, \$130 surcharge late filing fee or oath, and \$130 Petition fee;
- a copy of Express Mailing Label No. EV303718774US, indicating a mailing date of July 14, 2003;
- a copy of the Return Mailroom Postcard originally submitted with the application, indicating the submission of three (3) sheets of Drawings, which postcard bears the stamp of the United States Patent and Trademark Office, including the notations "10/619380" and "7/14/03;"
- three (3) sheets of Drawing marked "COPY," including Fig. 1A, Fig. 1B and Fig. 2, each of which was originally submitted as part of the application in question;
- a copy of the Utility Patent Application Transmittal, signed by the undersigned, and indicating the presence of three (3) sheets of Drawings (and the absence of the fee and the oath or declaration); and
- a petition and fee under 37 CFR §§ 1.53(e) 2 & 1.17(h) for the above-identified patent application.

As evidenced by the enclosed copy of Applicants' new patent application postcard receipt, there is no indication that the Drawings were not found among the documents mailed to the U.S. Patent and Trademark Office. Had the Drawings been missing, a notation should have been made on the postcard to that effect, such as a line through the recitation "Drawings (3 sheets)." "A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. ... If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the

person receiving the items." MPEP §503 (emphasis added). Clearly, no notation was entered upon

the Return Mailroom Postcard to indicate that the Drawings were missing at the time of receipt.

Therefore, Applicants respectfully submit that the three (3) sheets of Drawing

including Fig. 1A, Fig. 1B and Fig. 2, which are called out within the Specification, were present as

part of the application as filed. If the Drawings are presently missing, Applicants respectfully submit

that they were lost or misplaced after arrival at the U.S. Patent and Trademark Office mailroom,

which is a situation beyond the control of Applicants, and one for which Applicants should not be

penalized.

Applicants hereby respectfully petition the Commissioner, requesting the

determination that a filing date of July 14, 2003 be accorded the above-identified patent

application in the U.S. Patent and Trademark Office, and that the three (3) sheets of Drawing

submitted herewith be accepted and inserted in the file as replacements for the recited

"Drawings (3 sheets)" originally submitted by Express Mail on July 14, 2003, and received at

the U.S. Patent and Trademark Office.

Since it is believed that the Notice of Incomplete Nonprovisional Application was

issued in error, Applicants request a refund of the petition fee under 37 CFR 1.17(h) in the amount of

\$130. The Commissioner is authorized to deduct any additional fees from, or credit any

overpayment to, the undersigned's Deposit Account No. 50-0289.

Råspectfully submitted,

Joseph B. Milstein, Ph.D. Registration No. 42,897

WALL MARJAMA & BILINSKI LLP Date: October 29, 2003 November 7, 2003 JBM

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